IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1260 OF 2005

Sanjay Gopal Naik. ...Petitioner.

Versus

The Municipal Corporation of Greater
Greater Mumbai & Anr. ...Respondents.

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Mr. G.V. Murti for the Petitioner.
Mrs. A. R. Joshi for the Respondents.

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CORAM : DR. D.Y. CHANDRACHUD, J.

May 2, 2005.

P.C.:

The Petitioner claims to have acquired tenancy rights in respect of certain premises situated at 382-B, Pavwalla Building Compound, Maulana Shaukatali Road, Mumbai-400 007. According to the Petitioner, the premises were used for commercial purposef from 1955 until December 2003, namely, for the period prior to his

acquisition of tenancy rights. The previous tenant by the name of "Ellora Arts" is stated to have been granted a Shops and Establishment Licence and it has been stated that the licence was valid and renewed until December 2003. The Petitioner carried out certain repairs to the premises after the acquisition of tenancy rights. On 30th April 2004 a stop work notice was issued by the Municipal Corporation under Section 354A of the Mumbai Municipal Corporation Act, 1888. The Petitioner has stated before the Court that this notice was duly replied to by forwarding documents including the approved repair plan dated 2nd February 1962, assessment record, rent receipt and Shops and Establishment Licence. The Petitioner was directed to produce all original documents by a letter dated 10th May 2004 and it has been stated that this was done by the Petitioner on 12th May 2004. Since there was a fresh threat of demolition, the Petitioner instituted a suit in the City Civil Court being L.C. Suit No.2507 of 2004 challenging the notice that was issued under Section 354A. The City Civil Court passed an order of status quo in the suit. Counsel appearing on behalf of the Petitioner states

that the aforesaid order continues to subsists. The Petitioner made an application to the Second Respondent on 18th October 2004 for the grant of an Eating House Licence upon which the Petitioner was called upon to submit documents by a communication dated 26th October 2004. The application of the Petitioner was rejected on 19th January 2005 on the ground of the pendency of the suit in the City Civil Court.

The pendency of the suit before the City Civil Court cannot be a valid ground for rejecting the application for licence. The City Civil Court by its order dated 21st May 2004 has directed that the status quo be maintained in respect of the structure which forms the subject matter of the suit and it has been stated before the Court that the order of status quo continues to subsists. That being the position, the mere pendency of the suit cannot be a ground for rejection of the application for the grant of licence in accordance with law. Undoubtedly, it would be open to the Respondents to grant a licence without prejudice to their rights and contentions in the suit

which is pending before the City Civil Court. In the event that the motion that has been moved by the Petitioner for interim relief before the City Civil Court is dismissed, it would undoubtedly be open to the Municipal Corporation to take steps in accordance with law. In the meantime, since an order of status quo operates in respect of the structure, it would be only appropriate and proper if the application of the Petitioner is considered on its own merit. In the light of the aforesaid observations, the Competent Authority shall consider the application for a licence afresh and pass consequential orders in accordance with law within a period of four weeks from today. The Petition is accordingly disposed of. However, it is clarified that the City Civil Court shall not, in the pending suit, consider this order as amounting to any expression of opinion upon the authorisation of the structure or of the work that was carried out by the Petitioner. The City Civil Court shall deal with and dispose of the application for interim relief and the suit on its own merit without considering these observations as conclusive on the question which arise before it. The Petition is accordingly disposed of.

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